

May 30, 2003

JUN 06 2003

DAC

COVER LETTER: (RENEWED PETITION)

Application number: 09/490,859

Group art unit number: 3764

Filing date: January 24, 2000

Name of Examiner: Jerome Donnelly

Title of invention: Portable Exercise Assembly

Gentlemen, I wish to file a "RENEWED PETITION" and am responding to your letter dated April 2, 2003. In this letter it states that the two missing items needed to renew the petition are: 1. The petition fee of \$650. 2. The reply.

Enclosed is a check for the petition fee.

Regarding the "REPLY", as I understand it from reading the material found in your PTO web site, I must respond to the "OFFICE ACTION SUMMARY", corresponding to ART UNIT 3764. According to this "OFFICE ACTION", I must select between groups 1, group 2, or group 3; group 3 consisting of figures 18 - 24. I wish to select group 2, (figures 18 - 24). I am not interested applying for claims directed to the over the door or under the door brackets (group 3). I am also not interested in arguing for any claims and will accept whatever restrictions are applied by the examiner. I am now compelled to deal with PTO direct without the use of an attorney; therefore I must seek the most simplest and direct route in obtaining this patent.

I also understand that a statement is required by me concerning the delay I responding. Here is the statement:

I hereby declare that the delay in filing the required reply from the due date for the reply until the filing of a granted petition to 37 CFR 1.137 b was unintentional.

Once again regarding the reply, I am confused about a statement from PTO, that I previously received. Enclosed is a copy of this statement (page 4). Here it seems to be clearly stated that the reply for 09/490,859, had already been submitted. Could the PTO please explain this to me?

I also understand that this response must be submitted within 2 months of the mailing date of the decision. (Copy was mailed April 02, 2003). My reply is being mailed on May 30.

Regards.....W. Joe Mikulski

W Joe Mikulski

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#15

PTO/SB/64 (10-01)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

First named inventor: WALTER JOE MIKULSKIApplication No.: 09/490,859Art Unit: 3764Filed: JAN 24, 2000Examiner: JEROME DONNELLYTitle: PORTABLE EXERCISE ASSEMBLYAttention: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (703) 305-9282.The above-identified application became abandoned for failure to file a timely and proper reply to a
notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the
expiration date of the period set for reply in the Office notice or action plus an extensions of time
actually obtained.**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee —required for all utility and plant applications
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee☒ Small entity-fee \$ 650 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☐ Other than small entity - fee \$ _____ (37 CFR 1.17(m))**2. Reply and/or fee****A. The reply and/or fee to the above-noted Office action in**

the form of _____ (identify type of reply):

- ☐
- has been filed previously on _____
-
- ☐
- is enclosed herewith.

B. The issue fee of \$ _____

- ☐
- has been paid previously on _____
-
- ☐
- is enclosed herewith.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on
the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC
20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

06/09/2003 CNGUYEN 00000141 09490859

01 FC:2453

650.00 OP

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UNITED STATES PATENT AND TRADEMARK OFFICE



COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Document No. 14

Walter Joseph Mikulski
AMCONGEN/RIMC
PSC 115
APO AE 09213-0115
GERMANY

COPY MAILED

APR 02 2003

OFFICE OF PETITIONS

DECISION ON PETITION

In re Application of
Walter Joseph Mikulski
Application No. 09/490,859 *Letter*
Filed: January 24, 2000
Attorney Docket No. 1.827.99

This is a decision on the petition under 37 CFR 1.137(b) filed March 24, 2003, to revive the above-mentioned application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned on January 2, 2002, for failure to timely file an appropriate response to the non-final Office action mailed October 2, 2001, which set a shortened period for reply of three (3) months from its mailing date. No extension of time for reply available to petitioner under 37 CFR 1.136(a) was obtained; the application became abandoned on January 2, 2002.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by

(1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

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In re Application of Walter Joseph Mikulski
09/490,859

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(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy the requirements of items (1) and (2) above.

As to item (1), no response to the non-final Office action was found among the application papers. Before a petition under 37 CFR 1.137(b) can be considered grantable, petitioner must file a proper reply to the non-final Office action either in the form of an amendment or a continuing application.

As to item (2), the petition fee of \$650.00 was not found with the petition papers. Before a petition under 37 CFR 1.137(b) can be considered grantable, petitioner must remit the petition fee in the amount of \$650.00.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
2011 South Clark Place
Customer Window, Mail Stop Petitions
Crystal Plaza Two, Lobby, Room 1B03
Arlington, VA 22202

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Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0010.

Kenya A. McLaughlin

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

that petitioner may be experiencing some extraordinary circumstances, petitioner's hectic work assignment and schedule will not suffice to qualify any delay in responding to the non-final Office action as unavoidable. Such delay may be unintentional, however, and a petition under 37 CFR

1.137(b) remains an option to petitioner. Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by the required reply (already submitted), the required petition fee (\$1,280.00 for a large entity and \$640.00 for a verified small entity), and a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. A copy of a blank petition form PTO/SB/64 is enclosed for petitioner's convenience.

It is noted that petitioner remitted \$640.00 towards payment of the issue fee for the application. It does not appear, however, that a "Notice of Allowance and Issue Fee Due" was yet issued for the subject application. The amount of \$640.00 is, therefore, refunded to petitioner in due course.

Further, it is noted that petitioner requested an extension of time in which to respond to the non-final Office action. The request for an extension of time was made outside the maximum statutory period set for reply and cannot be granted.

The "Change of Correspondence Address" form, filed September 9, 2002, is noted and made of record.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clarke Place
Crystal Plaza 4, Suite 3C23
Arlington, Virginia 22202

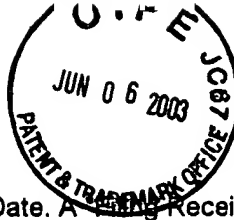
Telephone inquiries regarding this decision should be directed to the undersigned (703) 305-0010.

W. J. Mikulski

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assigned an Application Number and a Filing Date. A "Filing Receipt" containing this information is sent to the applicant. The application is then assigned to an examiner. Applications are examined in order of their filing date.

Examination

The actual "examination" entails checking for compliance with formalities, ensuring completeness of the drawing disclosure and a comparison of the claimed subject matter with the "prior art." "Prior art" consists of issued patents and published materials. If the claimed subject matter is found to be patentable, the application will be "allowed," and instructions will be provided to applicant for completing the process to permit issuance as a patent.

The examiner may reject the claim in the application if the disclosure cannot be understood or is incomplete, or if a reference or combination of references found in the prior art shows the claimed design to be unpatentable. The examiner will then issue an Office action detailing the rejection and addressing the substantive matters which effect patentability.

This Office action may also contain suggestions by the examiner for amendments to the application. Applicant should keep this Office action for his or her files, and not send it back to the Office.

Response

If, after receiving an Office action, applicant elects to continue prosecution of the application, a timely reply to the action must be submitted. This reply should include a request for reconsideration or further examination of the claim, along with any amendments desired by the applicant, and must be in writing. The reply must distinctly and specifically point out the supposed errors in the Office action and must address every objection and/or rejection in the action. If the examiner has rejected the claim over prior art, a general statement by the applicant that the claim is patentable, without specifically pointing out how the design is patentable over the prior art, does not comply with the rules.

In all cases where the examiner has said that a reply to a requirement is necessary, or where the examiner has indicated patentable subject matter, the reply must comply with the requirements set forth by the examiner, or specifically argue each requirement as to why compliance should not be required.

In any communication with the Office, applicant should include the following items:

1. Application number (checked for accuracy).
2. Group art unit number (copied from filing receipt or the most recent Office action).
3. Filing date.
4. Name of the examiner who prepared the most recent Office action.
5. Title of invention.

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It is applicant's responsibility to make sure that the reply is received by the Office prior to the expiration of the designated time period set for reply. This time period is set to run from the "Date Mailed," which is indicated on the first page of the Office action. If the reply is not received within the designated time period, the application will be considered abandoned. In the event that applicant is unable to reply within the time period set in the Office action, abandonment may be prevented if a reply is filed within six months from the mail date of the Office action provided a petition for extension of time and the fee set forth in 37 CFR § 1.17(a) are filed. The fee is determined by the amount of time requested, and increases as the length of time increases. These fees are set by Rule and could change at any time. An "Extension of Time" does not have to be obtained prior to the submission of a reply to an Office action; it may be mailed along with the reply. See insert for schedule of current fees. Note: an extension of time cannot be obtained when responding to a "Notice of Allowance."

Office Action Summary



Application No. 09/440454-01 Applicant(s) _____

Examiner J. Donnell

Group Art Unit 3764

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on Jan 24, 2000
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-34 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1-34 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
 - ☐ received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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Art Unit: 3764

This application contains claims directed to the following patentably distinct species of the claimed invention: Group I Figures 1-8 Group 2 Figures 18-24 Group 3 Claims directed to the over the door mounted bracket of Figure 25 or the under mounted door bracket of figure 25.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3

**Malloy &
Malloy, P.A.**



"Since 1959"
Registered Patent Attorneys
Trial and Appellate Counsel
Internet: malloylaw.com

Patent, Trademark & Copyright Law

Miami Office
2800 S.W. Third Avenue
Miami, Florida 33129
Telephone (305) 858-8000
Facsimile (305) 858-0008

FL. Lauderdale Office
2101 West Commercial Blvd.
Reply to: Miami Office
Broward (954) 525-9611
FLORIDA (800) 337-7239

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~~November 9, 2001~~

VIA FACSIMILE & MAIL
011 (49-69) 753-53860

American Consulate General
Walter Mikulski RSC/RIMC/ABA
PSC 115
APO, AL 09213-0115

Re: U.S. Continuation-In-Part (CIP) Patent Appl. for -
PORTABLE EXERCISE ASSEMBLY
Our Ref.: 1.827.99

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Dear Mr. Mikulski:

We have been in communication with the U.S. Patent Office in connection with your above-referenced patent application.

Specifically, a Patent Examiner has reached your application for review and before proceeding further, he has issued an Office Action wherein he states that in his opinion, this application contains claims drawn to more than one invention and which are in distinct and separate fields of search. Therefore, he is requiring that we "elect" one group of the claimed inventions in the patent application so that the Examiner can proceed to perform a search on the elected group of inventions.

While we do not agree with the Examiner on this point, he is requiring that we elect one of the following inventions in order for him to proceed further on your application:

Group I. Figures 1 - 8; or

Group II. Figures 18-24; or

Group III. Claims directed to the over the door mounted bracket of Figure 25 or the under mounted door bracket of figure 25.

Please be advised that we are able to "provisionally elect" one of the above groups and simultaneously, file arguments as to why the application should be viewed as containing only one invention.

We must respond to the Examiner's Action on or before **December 2, 2001**. However, we are permitted to respond up to two (2) months later by paying government extension fees (\$200 - \$460). These



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charges are in addition to any legal fees involved in responding to the Examiner's Action. Please keep in mind that the absolute deadline for responding to the Examiner's Action is: February 2, 2002.

Accordingly, please review this letter as well as the attached copy of the Examiner's Office Action and then, contact us to advise which of the three (3) inventions should be elected for further processing by the Examiner. Also, please advise whether we should argue with the Examiner's requirement. If we do not voice our objections at this time, the only response for the NON-elected group of invention will be to file a divisional application which covers same.

We estimate that the fees and expenses involved with simply electing one of the identified groups will be \$400.00 whereas if we are to argue against the requirement, they will likely be in the range of \$1,200.00. With respect to filing a divisional application for the NON-elected claims, should that be necessary, the expected charges will likely be \$1,700.00.

As always, if you have any questions or comments, please do not hesitate to call or write.

Kindest regards.

Very truly yours,

Peter A. Matos
For the Firm

November 26, 2001

Mr. Peter Matos, I have received your letter from Nov 9th and have made my choice. I want to go with Group II. That is (figures 18 - 24). As you know, I live and work overseas, (constantly travelling). This makes it impossible to respond to such deadlines through the mail system. I am therefore sending you me answer via FAX. There is one more issue I want to resolve please. Because I am no longer living in Pompano Beach, I need an address change to reflect on the patent should I be issued one. The new address for the patent should be:

W. J. Mikulski
PO BOX 561225
Orlando Florida, 32806

I also have a slight address change for here in Germany for correspondence purposes is:

Walter Joe Mikulski
AMCONGEN/RIMC
PSC115
APO AE 09213-0115

Telephone: 49 69 7535-3890
FAX: 49 69 7535-3860

W Joe Mikulski

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